

<sup>1</sup> Transcript of Preliminary Hearing, p. 14.

2. Claimant continued to work that day, was scheduled off the next day, and then returned to her regular duties. She testified that she did not initially think she needed medical treatment.

3. In her work for respondent, claimant operated machines that blow plastic bottles. The operation required that she load a hopper with forms to feed the machines. She loaded the hopper using a pallet jack, but she also manually pushed the pallet jack back and forth to load and unload.

4. On November 5, 1998, claimant reported to the Human Resource manager, Cindy Garner, that she felt she was straining her leg at work. Claimant did not report back pain and did not report the incident of October 4, 1998. According to claimant, she had not at this time associated the problem with this October 4 incident.

5. Respondent referred claimant to Occupational Health where claimant saw Dr. William G. Stueve. The medical records from that first visit on November 6, 1998, contain the following history:

The patient reports that over the past week or so she has had right inner thigh discomfort. In her job she pushes a one-thousand pound pallet jack using her right leg as a push off point.

Nothing in Dr. Stueve's records mention back pain. He diagnosed abductor strain. The record shows an October 1, 1998, date of injury. This date of injury is inconsistent with other history shown. Nothing in the report and nothing otherwise in the evidence in this case provides any further explanation for this date of injury. As to causation, Dr. Stueve stated:

Causation: To a reasonable degree of medical probability, the current problem with her right abductor muscle is causally related to the injury reported 10/01/98.

6. Claimant next saw Dr. H. C. Palmer, Jr., on November 16, 1998. The record of this visit reflects claimant denied any injury and stated she first noticed her discomfort in bed. Dr. Palmer stated in his notes that the discomfort was not work related since there was no injury. Dr. Palmer recommended claimant see her personal physician.

In contrast to Dr. Palmer's notes, claimant testified that when she saw Dr. Palmer she related the symptoms to the constant stress of moving the pallet jack. Claimant acknowledges she did not relate the symptoms to the October 4, 1998, incident. Claimant also testified that when she referred to symptoms while in bed she did not mean they had started then but that the symptoms had been at what she called the "fiercest point."

7. Claimant testified she first associated her symptoms with the incident in October 1998 after Dr. Palmer questioned her about the cause. Claimant testified she had not been injured away from work and then remembered the incident on October 4, 1998.

8. As Dr. Palmer recommended, claimant went to her family physician, Dr. Lin Clark. Dr. Clark in turn referred claimant to Dr. Eden Wheeler. Dr. Wheeler changed claimant's physical therapy. Claimant testified she had very little back pain, nothing unusual. Although claimant has had low back complaints since approximately 1996, the back pain became much worse when Dr. Wheeler changed the physical therapy and put her in traction.

9. Dr. Wheeler diagnosed groin/abductor strain and degenerative disc disease of L5-S1 with exacerbation. Dr. Wheeler states she cannot say that the low back pain is causally related to the patient's claim of injury in October 1998 because there is no documentation of the low back pain until claimant's evaluation by Dr. Wheeler in February 1999. Dr. Wheeler acknowledged the possibility that the exacerbation may have been from altered gait mechanics as well as possibly the physical therapy. Dr. Wheeler also states she had concerns about causally relating the right groin strain to work because of inconsistent history given to the physicians.

10. Claimant was placed on light duty in November 1998. In March 1999, respondent ran out of the light duty work and claimant has not worked since.

11. Claimant has, at the request of her attorney, been examined by Dr. John H. Amick. Dr. Amick opines that the right abductor muscle injury is related to the slip and fall at work. He also gives a date of October 1, 1998. He also concludes the slip and fall aggravated claimant's degenerative disc disease.

12. Claimant has also been seen by Dr. Robert J. Takacs and Dr. Timothy E. Stepp. Dr. Takacs recommends surgery, a fusion at L5-S1. Dr. Stepp does not believe surgery will be helpful. Although their records contain a history of injury on the job, neither physician gave a specific opinion on causation.

13. The initial preliminary hearing was held in this case on July 15, 1999. The ALJ did not initially order the respondent to provide surgery because of concerns about whether the surgery was necessary. Based on later reports from Dr. Takacs, the ALJ has, in the appealed order, required respondent to provide the fusion surgery.

#### **CONCLUSIONS OF LAW**

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).

2. The Board concludes, based on the record presented to date, that claimant has failed to prove that her back injury arose out of her employment with respondent. The

history is inconsistent and the delay in onset of back symptoms is inadequately explained by the evidence. The Order should be reversed.

3. The above conclusion makes it unnecessary to reach the other issues raised.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Robert H. Foerschler on November 1, 1999, should be, and is hereby, reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2000.

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BOARD MEMBER

c: Mark E. Kelly, Liberty, MO  
Denise E. Tomasic, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director